

## **Meaningful Participation and Effective Communication by a *Pro Per* Respondent in a Conservatorship Case**

A respondent who represents himself or herself would need to be able to perform the following tasks in order to have meaningful participation and effective communication in a conservatorship proceeding:

**1. Review the petition and moving papers.**

The respondent would *need to be able* to read the information in the petition and related documents (or have the papers read to them by someone else without a conflict of interest) to determine if the information is true. This would require the respondent to understand the meaning of the words and sentences used in these documents. The respondent must also be capable of having the response served.

**2. Respond to the petition and investigator's report.**

The respondent would *need to be able* file paperwork pointing out any areas where information in the petition or court investigator's report is not true. This would require the respondent to be able to articulate words that convey any objections that may exist to factual statements contained in those documents.

**3. Review and respond to the capacity declaration.**

The respondent would *need to be able* to evaluate the information contained in the medical capacity declaration filed by the doctor who presumably examined him or her. This would require the ability to understand technical medical words and concepts. It would also require the ability to determine if the examination was done properly. The respondent would need to have the ability to call the doctor on the phone to discuss the evaluation process and to question the opinions contained in the declaration.

**4. Challenge sufficiency of petitioner's evidence.**

The respondent would *need to be able* to understand the concept of "clear and convincing evidence" and make an informed decision about whether the allegations in the petition – and evidence produced by the petitioner – meets this standard on each and every legal element necessary for the issuance of a conservatorship order.

**5. Develop an affirmative defense.**

The respondent would *need to be able* to present evidence that a conservatorship is not needed, that there is a lesser restrictive alternative, that capacity to make decisions exists in some of the relevant areas (financial, medical, residence, marital, social, sexual, etc), there is a better choice of who should be conservator, that petitioner has ulterior motives in initiating the proceeding, that the proposed conservator has been or would be abusive, etc. The respondent would need to be able to call witnesses, to present evidence, and to cross-examine the petitioner's witnesses to challenge their assertions.

**6. Call expert witnesses.**

The respondent would *need to be able* to ask that an independent expert be appointed to develop an affirmative defense that respondent has capacity in one or more areas.

**7. Demand contested hearing and jury trial.**

The respondent would *need to be able* to decide whether to demand a contested hearing and if so, whether also to demand a jury trial.

**8. Insist on due process.**

The respondent would *need to be able* to know what statutory and constitutional protections exist and to insist that the judge and other participants follow the law.

**9. Waive rights.**

In order to forego the procedures listed above, the respondent would *need to be able* to make a knowing and voluntary waiver of these rights and be able to communicate the waiver of each of them to the court.

*Appointment of competent counsel helps to ensure meaningful participation and effective communication by a respondent in a conservatorship case.*